IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No: 2112 of 2001

Between:

1. Mr. Rajesh Behi, S/o. Sundarlal Bahi,

Major, Managing Director,

Samatha Marine Shipping Company,

C/o. Geo-Chem House, 29-4, Shahid Bhagatsing Road,

Fort, Mumbai – 400 001.

2. The Manager, Samatha Marine Shipping Company,

C/o. Samatha Services (P) Ltd.,

Commercial Road (Wheat Road), Kakinada,

Rep., by Sri M. Jayaraj Nair,

S/o.C.K.Kanhamba, Ageed 43 years.

..... PETITIONERS

AND

1. The Industrial Tribunal cum Labour Court,

Visakhapatnam. Rep., by its presiding officer.

2. Kompella Gopalakrishna, S/o. Seshavatram,

D.No.59-15-4, Kakiletivari Agraharam,

Jaganaickpur, Kakinada – 533 002.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records and quash the award dated 4th August, 2000 passed in I.D.No.50 of 1998 on the file of the Industrial Tribunal, Visakhapatnam by issuing a writ of Certiorari or any other appropriate writ or order or direction as this Hon'ble Court deems fit and proper in the circumstances of the case and to allow this writ petition with costs.

Counsel for the Petitioners: MS.G.SUDHA

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: P.RAGHAVENDER REDDY

The Court made the following:

ORAL ORDER:-

This Writ Petition is filed assailing the award, dated 04.08.2000, passed by Industrial Tribunal in I.D.No.50 of 1998.

The brief facts that are necessary for the disposal of the writ petition are as follows:

The 2nd respondent herein was originally appointed as temporary tally clerk and subsequently, he was made a godown incharge to the godown situated at Kovvuru Road. On inspection of the godown, the petitioners company found shortage of new 6,500 number of PP bags belong to M/s.Food Facts and Fertilizers Limited and 3000 bags belonging to M/s. ITC (IBD) worth Rs.55,000/- and 30,000/- respectively, which were in the custody of the 2nd respondent. The petitioners company gave a report in the Police Station about the missing goods. When the petitioners company questioned the 2nd respondent about the missing goods, he absented for the duty from 10.10.1997 onwards and extended the same by applying leave. Thus, he remained absent without any sanctioned leave. Later on the 2nd respondent herein raised an Industrial Dispute before the 1st respondent under Sections 2A(2) and 10(1)(d) alleging that the petitioners herein illegally terminated his services and he should be reinstated into service with back wages and continuity of service.

On behalf of the workman, one witness was examined and 32 documents were marked. On behalf of the Management, one witness was examined and 6 documents were marked. Upon the appreciation of the evidence available on record, the Tribunal came to the conclusion that Section 25-F of the Industrial Disputes Act (for short "the Act") has not been followed by the petitioners herein and therefore, holding that there was a retrenchment within the meaning of Section 2(o)(o) of the Act and accordingly, directed the petitioners to reinstate the 2nd respondent with all back wages and continuity of service. Aggrieved by the said award, the present writ petition has been filed.

Learned counsel appearing for the petitioners contended that the petitioners company is not in existence with effect from 2003 onwards and that it is not a case of any termination by the Management, but it is a case where the 2nd respondent himself voluntarily abandoned the post out of fear that departmental action would be initiated against him on the ground that he was responsible for causing loss of Polythene bags worth about Rs.80,000/-, therefore, question of termination does not arise. During the pendency of the enquiry, the Tribunal also gave a direction to the 2nd respondent herein to join the duty to discharge his duties in the presence of work inspector, which shows that it is a clear case of abandonment by the 2nd respondent.

On the other hand, the learned Government Pleader opposed the application on the ground that the award does not suffer from incurable legal infirmities.

Learned counsel appearing for the 2nd respondent contended that upon appreciation of the evidence available on record, the findings has been given by the Tribunal. Unless, there is any perverse finding, this Court cannot exercise its jurisdiction under Article 226 of Constitution of India.

It is not in dispute that the scope of judicial review to interfere with the orders of the Tribunal are very circumscribed and unless the findings are not based upon the evidence or the findings are perverse, this Court will not interfere with the award passed by the Tribunal. Basing upon the evidence on record, when two views are possible, the view taken by the Tribunal cannot be interfered with, because this

Court cannot re-appreciate the evidence adduced by the parties. At best, this Court can look into the evidence in order to test the findings of the Tribunal whether it is based upon any evidence or not.

The specific case of the petitioners is that the 2nd respondent himself stopped in attending the duty. Whereas, it is the specific case of the 2nd respondent that he was not allowed discharging his duties from 28.10.1997 onwards. The findings recorded by the Tribunal are not challenged even by the learned counsel for the petitioners to the effect that they are not based upon any material on record. The findings of the Tribunal are that the Management witness himself admitted that the 2nd respondent applied for leave on 10.10.1997 and also a criminal case was filed against some of the persons who are responsible for theft of polythene bags and in that case the 2nd respondent was shown as one of the prosecution witnesses. The contention of the learned counsel for the petitioners can be acceptable that the workman on assumption that the department may initiate proceedings by issuing a charge sheet against him and therefore, he himself absented to attend the duties, but here is a case where the workman was shown as a prosecution witness in the criminal case. Under these circumstances, it is most unlikely that he would not have absented himself in attending the duties. So basing on that evidence, the Tribunal took a view that it is not a case where the 2nd respondent herein himself voluntarily absented from attending the duties, that finding cannot be said to be perverse, because it was based upon the evidence. Therefore, when the 2nd respondent was not allowed to discharge his duties that amounts to termination within the meaning of Section 2(o)(o) of the Industrial Disputes Act. Admittedly the procedure contemplated under Section 25-F of the Act has not been violated even before oral termination or directing the 2nd respondent not to attend the duties.

Learned counsel for the petitioners place a strong reliance on the directions given by the Tribunal, while the matter is pending, directing the 2nd respondent to join the duty, but the same has not been complied with. When the 2nd respondent was agitating for his rights in not allowing him to discharge his duties from 1997 onwards, the question of joining the duty in the year 2001 does not arise. Since the

award under challenge does not suffer from any incurable infirmities, it is complete in accordance with law and the findings need not be interfered with.

Accordingly, the writ petition is devoid of merit and the same is dismissed. No order as to costs.

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13.07.2005

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To

1. The Presiding Officer, Industrial Tribunal cum Labour Court,

Visakhapatnam.

2. 2 CCs to the GP for Labour, High Court buildings, Hyderabad (OUT)

3. 2 CD copies

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